HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G. V. SEETHAPATHY

Writ Petition No.15218 of 2001

Between:

Gurijala Thimma Reddy

... Petitioner

And

State of Andhra Pradesh, represented
By Principal Secretary, Hyderabad and others

... Respondents

:: ORDER::

Counsel for the Petitioner: Sri Y. Vivekananda for
Sri Y.N. Lohita

Counsel for Respondent No.1: Government Pleader for
Industries

Counsel for Respondent No.3: Sri P.S.P. Suresh Kumar

Counsel for Respondent No.4: Sri K. Gopal Chowdary

August 31, 2006

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Per G.S. Singhvi, CJ

In this petition, the petitioner has prayed for quashing the sale of the assets of M/s. Nandyal Cooperative Sugars Limited (for short, 'Nandyal Sugars') in favour of M/s.Rayalaseema Sugars Limited (respondent No.4).

The background facts:

Nandyal Sugars was registered as a cooperative society under the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'the Act'). The majority of its shares (92.97%) valued at Rs.844.28 lakhs were held by the State Government. The factory set up by Nandyal Sugars in Kurnool District with an installed capacity of 1250 TCD had to be closed down during the crushing season of 1990-91 on account of non-availability of raw materials, high cost of production and fall in the sugar prices. After three years, the factory was re-started in 1994-95 under the management of IFFCO, but was again closed in 1996-97. As on 31-3-2000, the accumulated loss of Nandyal Sugars rose to Rs.1,768-00 lakhs as against paid up share capital of Rs.953.94 lakhs. In May 2001, the Registrar of Cooperative Societies, Andhra Pradesh, in exercise of the power vested in him under Section 12-A (1) of the Act, issued an advertisement for sale of the assets of Nandyal Sugars. The petitioner, respondent No.4 and M/s.Sujara Pipes gave bids of Rs.999.99 lakhs, Rs.601.25 lakhs and Rs.125 lakhs respectively. The bid of the petitioner was rejected because it was not accompanied by Earnest Money Deposit of Rs.10 lakhs in the form of Demand Draft/Banker's Cheque. The bid given by respondent No.4 was accepted by the competent authority because it was much higher to the one given by M/s.Sujara Pipes. After paying

full price, the management of respondent No.4 took over the assets of Nandyal Sugars on June 05, 2003. The paper formalities for transfer of Nandyal Sugars to respondent No.4 were completed in the month of September, 2003. Thereafter, 179 employees of Nandyal Sugars availed the benefit of Voluntary Retirement Scheme/Special Severance Package and a total sum of Rs.1,75,56,322/- was paid to them.

After taking over the assets of Nandyal Sugars, respondent No.4 made substantial investments and commenced trial run of the factory in November 2003 by crushing about 20,000 MT of sugarcane. The new management started regular operations in January 2004. In 2004-05, respondent No.4 successfully operated the factory and obtained term loans and working capital loans to the tune of Rs.5.8 crores from the financial institutions. For the purpose of securing repayment of the loan, the Directors of respondent No.4 mortgaged their personal assets as also the assets of their friends and relatives.

In the meanwhile, the petitioner filed this petition questioning the decision of the official respondents to accept the bid of respondent No.4. He pleaded that the sale of Nandyal Sugars to respondent No.4 is wholly arbitrary, unreasonable and contrary to public interest. In the affidavit filed by him, the petitioner has averred that the advertisement issued on 30-5-2001 by the competent authority was extremely vague and the prospective bidders were prevented from knowing the details of the proposed sale because for this purpose they were required to obtain application form by paying an exorbitant amount of Rs.5,000/-, which was not refundable. According to the petitioner, this onerous condition also prevented the shareholders, the workmen and the cane growers from making bid for revival of Nandyal Sugars. He has then averred that at the time of submitting

bid document, he had requested the concerned authority to treat his shares as Earnest Money Deposit, but the official respondents arbitrarily rejected his bid and accepted an extremely low bid of rupees six crores given by respondent No.4. It is the contention of the petitioner that if a fair and proper bid process had been followed, large number of other persons would have come forward to participate and they would have offered much higher price.

In the affidavit filed on behalf of respondent No.2 by Smt. Janaki R. Kondapi, Principal Secretary to Government, Public Enterprises Department and Implementation Secretariat, it has been averred that the bid submitted by the petitioner was treated invalid because he did not submit Demand Draft/ Banker's Cheque of Rs.10 lakhs towards Earnest Money Deposit. In paragraph 15 of her affidavit, the deponent has averred that all details regarding the assets offered for sale were incorporated in the Information Memorandum and Bid Documents, which could be obtained by the prospective bidder by registering his interest with Implementation Secretariat on payment of a non-refundable fee of Rs.5,000/- and signing a Confidentiality Agreement. In paragraph 16, she has averred that the advertisement was very clear with regard to the method and manner in which the application was required to be made. Still further, she has averred that the petitioner was given full opportunity to put forth his views at the Pre-Bid conference held on 26-5-2001. He was also authorized to inspect the assets for the purpose of submitting bid documents, but he did not avail that opportunity. In paragraphs 18 and 19 of her affidavit, Smt. Janaki R. Kondapi has explained the methodology adopted for valuation of the assets of Nandyal Sugars. In paragraphs 20 and 21, she has spelt out the reason for not considering the bid given by the petitioner. For the sake of reference, these paragraphs

are reproduced below:

> "18. With reference to para No.5 (iv) of the affidavit under reply, it is submitted that the assets of the Society were valued by Government approved Professional Valuer in June, 1997. The Professional Valuer assessed the market value of the Sugar Mill excluding stores etc. at Rs.14.3 crores, in June 1997. For assessing the value of the assets, various factors were taken into consideration. For land, the Professional Valuer had taken into consideration the location, nature of title, (freehold / leasehold / restrictions), area of the land, permissible use of such land, development made, present transfer price / market value, etc. For buildings, the Valuer had taken into consideration the factors like location, year of construction, nature of structure, present use, cost of construction, market value etc. For plant and machinery, the factors like location, source of procurement, age of the equipments, residual life, general condition, state of repairs, purchase cost, installation expenses, technical parameters, etc. were taken into consideration. The market value is arrived from the replacement value of similar type and size of an asset, and such replacement value is suitably depreciated by the factors such as technological obsolescence, state of repairs and maintenance, normal wear and tear due to its operation in the plant and idleness of the asset.
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> 19. It is further submitted that the Professional Valuer carried out valuation of the assets of the Mill in June, 1997 for the purpose of obtaining financial assistance from banks and not for the purpose of estimating value in a sale. The fair market value (excluding stores etc.) was taken to be Rs.14.30 crores. The Bid Evaluation Committee felt that depreciation for four years (June 1997 to July 2001) needed to be applied and further allowance made for inactivity. This reduced the depreciated replacement value of the assets by a minimum of 4% per annum to an estimated Rs.11.9 crores. Realisable value of operting mills (e.g. Nizam Sugars Ltd.) is generally taken by the valuers to be 20-30% of the depreciated replacement cost. In this case, a larger discount would be required being a 20 year old mill that is closed for the past 5

years. The sugar mill operated for only 11 out of 20 years. In the years that it operated, the capacity utilization ranged from 7.4% to a maximum of 56%. According to the Bid Evaluation Committee, applying a conservative discount of 35%, the realizable value of the assets worked out to Rs.valuation of the assets of the Mill in June, 1997 for the purpose of obtaining financial assistance from banks and not for the purpose of estimating value in a sale. The fair market value (excluding stores etc.) was taken to be Rs.14.30 crores. The Bid Evaluation Committee felt that depreciation for four years (June 1997 to July 2001) needed to be applied and further allowance made for inactivity. This reduced the depreciated replacement value of the assets by a minimum of 4% per annum to an estimated Rs.11.9 crores. Realisable value of operating mills (e.g. Nizam Sugars Ltd.) is generally taken by the valuers to be 20-30% of the depreciated replacement cost. In this case, a larger discount would be required being a 20 year old mill that is closed for the past 5 years. The sugar mill operated for only 11 out of 20 years. In the years that it operated, the capacity utilization ranged from 7.4% to a maximum of 56%. According to the Bid Evaluation Committee, applying a conservative discount of 35%, the realizable value of the assets worked out to Rs.7.7 crores. The book value is Rs.6.53 crores. The offer of Rs.6,01,25,000/- is 78% of the estimated realizable value and 92% of the book value. The Sugar Mill will require substantial investment to rehabilitate. In view of the above, and the plans for investment, employment and new economic activity, the highest offered price of Rs.6,01,25,000/- was considered fair and reasonable. Hence, the allegation of the petitioner that the evaluation of the assets made about four years back that too by a private agency cannot and should not form the basis of the sale of the assets is incorrect and baseless.

20. With reference to para No.5 (v) of the grounds mentioned in the affidavit under reply, it is submitted that the contention of the petitioner that he had not been informed with regard to the rejection of the bid, it may be mentioned that the Summary Time-Table for the process given in the Information

Memorandum is only indicative. As the bids have not been approved by the competent authority as on 10-7-2001, the petitioner was not informed of the result of his bid by 10-7-2001.

21. With regard to para No.5 (vi) of the grounds mentioned in the affidavit under reply, it is submitted that it is clearly stated in the Information Memorandum and Bid Documents that the EMD of Rs.10.00 lakhs must be paid by means of Demand Draft / Banker's Cheque drawn in favour of the Implementation Secretariat payable at Hyderabad. The petitioner has failed to comply with this requirement and hence his bid was rejected. Therefore, the contention of the petitioner that the shareholding of the shareholders of the Society should be treated as EMD for the submission of the Bid is totally incorrect and without any basis."

In a separate affidavit filed by him, Shri K. Madhusudhan, Managing Director of respondent No.4 has adverted to the background in which the assets of Nandyal Sugars were sold, the details of the bid given by three parties and the post-takeover events. In paragraph 13 of his affidavit, Shri K. Madhusudhan has averred that two share certificates of 50 shares each in the name of the petitioner and his wife were wholly insufficient to sustain his claim of having offered amount towards the Earnest Money Deposit.

Shri Y. Vivekananda, learned counsel for the petitioner argued that the rejection of his client's bid should be declared illegal and quashed because the solitary reason assigned by the official respondents for doing so is legally untenable. Learned counsel submitted that the condition of depositing Rs.10 lakhs towards Earnest Money Deposit was not mandatory and non-compliance thereof could not be made basis for refusing to entertain the petitioner's bid of Rs.999.99 lakhs, which was almost Rs.400 lakhs

more than the bid given by respondent No.4. He then argued that even if the condition regarding providing Earnest Money Deposit of Rs.10 lakhs is treated as mandatory, the same will be deemed to have been substantially complied with by the petitioner when he submitted written authorization dated 2-7-2001 signed by three persons that their shares be treated as Earnest Money Deposit. Shri Y. Vivekananda also assailed the decision of the official respondents to accept the bid of respondent No.4 by contending that the same has resulted in huge loss to the public exchequer. He emphasized that the total assets of Nandyal Sugars were valued at Rs.14.3 crores, but the same were disposed of for a paltry sum of Rs.6 crores.

Shri Vivekananda criticized the formula adopted by the official respondents for accepting the bid given by respondent No.4 and argued that the sale of the assets of Nandyal Sugars should be nullified keeping in view the larger public interest.

Learned Government Pleader for Industries and counsel representing the other respondents justified the rejection of the petitioner's bid and acceptance of the one given by respondent No.4 by arguing that the former's failure to furnish Demand Draft/Banker's Cheque of Rs.10 lakhs towards Earnest Money Deposit was fatal to his bid and the competent authority did not commit any illegality by accepting the bid of respondent No.4, which was much higher than the bid offered by M/s.Sujara Pipes. They further argued that the official respondents had not created any impediment in the submission of bid document by the petitioner and, therefore, he cannot complain of arbitrariness in the procedure adopted for disposal of the assets of Nandyal Sugars. Learned counsel for respondent No.4 emphasised that after taking-over the assets of Nandyal Sugars, his client has made huge investments for the

purpose of making the factory operational and argued that the Court may not nullify the sale of the assets of Nandyal Sugars at this belated stage.

We have thoughtfully considered the respective arguments. In paragraph 21 of the affidavit filed on behalf of respondent No.2, it has been categorically averred that in the Information Memorandum of Bid Document, the condition of furnishing the Earnest Money Deposit of Rs.10 lakhs by means of Demand Draft/Banker's Cheque of Rs.10 lakhs was clearly specified and that the petitioner failed to comply with this requirement. The petitioner has not controverted this assertion. Rather, the statement contained in his affidavit that he had made a request in writing to treat the value of the shares as Earnest Money Deposit clearly implies that he had failed to comply with the condition of furnishing Demand Draft/Banker's Cheque of Rs.10 lakhs towards Earnest Money Deposit. It is, thus, evident that the petitioner failed to comply with the requirement, which constituted a condition for valid bid. Therefore, the decision of the competent authority to reject his bid cannot be castigated as arbitrary, unreasonable or unjustified.

In **Monarch Infrastructure (P) Ltd. v. Commr., Ulhasnagar Municipal Corpn.**[1], the Supreme Court considered the question whether the Commissioner, Ulhasnagar Municipal Corporation could award contract for collection of octroi to a person who did not satisfy the conditions of eligibility specified in the advertisement. While approving the view taken by the High Court that the Commissioner did not have the jurisdiction to entertain the tender submitted by the appellant because it had not fulfilled the conditions relating to clause 6 (a) of the tender notice, the Supreme Court held that even though the said condition of eligibility had been subsequently deleted by the

State Government, the Commissioner could not have entertained the tender of the appellant.

In **W.B. State Electricity Board v. Patel Engineering Co.**[2], the Supreme Court set aside the direction given by the Division Bench of Calcutta High Court requiring the appellant to permit respondent Nos.1 to 4 to correct the bid documents and to consider their bid along with other bids and held:

> "1) The Project undertaken by the appellant is undoubtedly for the benefit of the public. The mode of execution of the work of the Project should also ensure that the public interest is best served. Tenders are invited on the basis of competitive bidding for execution of the work of the Project as it serves dual purposes. On the one hand it offers a fair opportunity to all those who are interested in competing for the contract relating to execution of the work and, on the other hand, it affords the appellant a choice to select the best of the competitors on a competitive price without prejudice to the quality of the work. Above all, it eliminates favouritism and discrimination in awarding public works to contractors. The contract is, therefore, awarded normally to the lowest tenderer which is in public interest. The principle of awarding contract to the lowest tenderer applies when all things are equal. It is equally in public interest to adhere to the rules and conditions subject to which bids are invited. Merely because a bid is the lowest the requirements of compliance with the rules and conditions cannot be ignored.
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> 2) As the bid documents of Respondents 1 to 4 stand without correction there will be inherent inconsistency between the particulars given in the annexure and the total bid amount, they cannot be directed to be considered along with the other bids on the sole ground of being the lowest."

The aforementioned judgments support the view which we have taken on the legality of the decision taken by the competent authority not to entertain the bid submitted by the petitioner.

We shall now consider the question whether the decision of the competent authority to accept the bid of respondent No.4 is vitiated by arbitrariness or the same is contrary to public interest. In this connection, it is appropriate to mention that the petitioner has not placed any material on the record of the writ petition to show that the criteria adopted by the official respondents for determining the value of the assets of Nandyal Sugars is contrary to any statutory provision or is tainted by mala fides. The petitioner has not made any allegation of personal ill-will against the members of the Bid Evaluation Committee. It is also not his case that any other person had come forward to give a higher bid. Therefore, the bald assertion made by him that the acceptance of the bid of respondent No.4 is arbitrary or ultra wires to public interest cannot be made basis for nullifying the decision of the competent authority and that too by ignoring the fact that respondent No.4 has made huge investments for the purpose of running the factory.

No other point has been argued.

In the result, the writ petition is dismissed.

G.S. SINGHVI, CJ

G. V. SEETHAPATHY, J

August 31, 2006.

svs

[1] (2000) 5 SCC 287

[2] (2001) 2 SCC 451